

APPEAL NO. 020655
FILED APRIL 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 26, 2002. With regard to the only issue before him, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by the appellant's (carrier) required medical examination doctor on July 10, 2000, with a zero percent IR did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) citing Fulton v. Associated Indemnity Corporation, 46 S.W. 3d 364 (Tex. App.-Austin 2001, pet. denied).

The carrier appeals based mostly on sufficiency of the evidence regarding whether and when the respondent (claimant) received notice of the first certification of MMI and IR. The carrier dismisses the Fulton decision as applying only to the parties to that decision and not binding on the Texas Workers' Compensation Commission (Commission). The claimant responds, urging affirmance.

DECISION

Affirmed.

We note that most of the CCH and the carrier's appeal dealt with when, if, or how the claimant received notice of the first certification of MMI and IR. In light of the Fulton, *supra*, decision we hold the receipt or nonreceipt of the first certification largely irrelevant.

Texas Workers' Compensation Commission Appeal No. 020406, decided April 3, 2002, sets out the history and current status of Rule 130.5(e). That decision cited Texas Workers' Compensation Commission Appeal No. 020014-s, decided February 26, 2002, and concluded that the "Fulton decision which held the original Rule 130.5(e) invalid also applies to the amended Rule 130.5(e)" applying Fulton. We further note that the Commission, in Advisory 2002-04, dated March 4, 2002, commented on the Fulton decision and noted that after consultation with the attorney general's office the Commission understands that "Rule 130.5(e) cannot be utilized as a basis for asserting the finality of MMI certification or an [IR] made **before** the statutory MMI defined periods"; that Texas Workers' Compensation Commission Advisory 2001-05 is no longer in effect and is suspended by Advisory 2002-04; and that disputes involving "Rule 130.5(e), will be handled on a case-by-case basis."

We reject the carrier's contention that Fulton only applies to the parties in that case and hold that the hearing officer did not err in applying Fulton in this case.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE ST. PAUL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge